IN THE UNITES STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELLIOT MENKOWITZ, M.D. and SUSAN MENKOWITZ	: :	CIVIL ACTION No. 97-2669
v.	:	
POTTSTOWN MEMORIAL MEDICAL CENTER, et al.	: :	

O'Neill, J. June , 1999

M E M O R A N D U M AND O R D E R

Plaintiff Elliot Menkowitz, M.D., brought this action after being summarily suspended for six months from the medical staff of Pottstown Memorial Medical Center (PMMC). He alleges that the suspension violated his rights under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181-88, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Plaintiff also asserts a variety of state law claims and his wife, Susan Menkowitz, brings a claim for loss of consortium. I previously dismissed the complaint after finding that plaintiff stated no cognizable claims under the federal statutes and declining to exercise supplemental jurisdiction over the state law claims. See 1997 WL 793010 (Dec. 2, 1997). The Court of Appeals for the Third Circuit reversed on appeal, finding that plaintiff did state claims under the ADA and Rehabilitation Act. See 154 F.3d 113 (1998).

Because of my disposition of defendants' earlier motion to dismiss, I did not

consider the legal sufficiency of plaintiff's state law claims. Defendants now renew their motion to dismiss these claims for failure to state a claim upon which relief can be granted.[1]

FACTUAL ALLEGATIONS

Plaintiff is an orthopedic surgeon who joined the medical staff of defendant Pottstown Memorial Medical Center (PMMC), a private, non-profit community hospital, in 1973. He was diagnosed with Attention-Deficit Disorder (ADD) in July 1995. In October, 1995 he was reappointed by PMMC to the two-year term required by PMMC's by-laws.

[1] In considering defendants' Rule 12(b)(6) motion, I accept as true the well-pleaded factual allegations in the complaint and construe them in the light most favorable to plaintiff. Kost v. Kozakiewicx, 1 F.3d 176, 183 (3d Cir. 1993). I am not required to accept allegations that amount to mere legal conclusions or "bald assertions" without any factual support. See, e.g., id.; Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). I may grant the motion only if I determine that plaintiff may not prevail under any set of facts that may be proven consistent with his allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." In re Burlington Coat Factory Litigation, 114 F.3d 1410, 1420 (3d Cir. 1997), quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

During his tenure at PMMC, plaintiff consistently voiced "concerns regarding quality of care assurance issues with PMMC." (Compl. ¶ 20.) In April 1996, out of dissatisfaction with his complaints, PMMC and defendants Buckley, Saylor, Martyny, and Draxler accused plaintiff of inappropriate behavior unrelated to his care of patients. (Compl. ¶ 21.) During the course of discussions about these accusations, plaintiff disclosed to defendants that he suffered from ADD, but assured them that the disorder had not and would not affect his treatment of patients or interactions with staff. He subsequently provided PMMC with a report from his treating psychologist and physician confirming this assurance and he also agreed in June, 1996 to be examined by another physician at PMMC's request. This physician confirmed that plaintiff's disorder did not and would not affect his ability to treat his patients or properly interact with staff. (Compl. ¶ 24.)

Following this "resolution" of his ability to practice at PMMC, plaintiff continued

to express concerns about the quality of care provided by defendants, including "improper and unlawful patient care and insurance practices"(Compl. ¶ 25), and defendants began harassing and intimidating him and unfairly singling him out for accusations of minor infractions of hospital policy. Then, on March 18, 1997, the medical staff's Medical Executive Committee (MEC) voted to summarily suspend plaintiff's medical staff privileges for six months. The MEC did not provide plaintiff with notice or a hearing prior to its vote, and did not inform him of its decision. On March 24, 1997, without giving plaintiff prior notice or a hearing, the Medical Committee of PMMC's Board of Directors held a hearing on the MEC vote and approved the suspension. Plaintiff was informed of his suspension the next day. Subsequently, PMMC and the individual defendants disclosed the suspension to various news media with the intent that it be published to the public. They also threatened to disclose the suspension to the National Practitioner Data Bank unless plaintiff took a leave of absence for the period of his suspension. Defendant Lignelli informed the surgical staff of the hospital of the suspension, implying in subsequent discussion that plaintiff had made medical mistakes and threatened staff and patients. (Compl. ¶¶ 25-37.)

On April 1 and April 4 plaintiff requested defendant Buckley for an immediate hearing on the suspension but received no response. He reiterated his request on April, 9 and was told that a hearing would be forthcoming. No hearing had been scheduled as of the filing of the complaint on April 18. (Compl. ¶¶ 36-40.)

Plaintiff alleges that as a result of the defendants' conduct he has suffered injury with regard to his earnings, insurance coverage, practice at other institutions, and personal and professional reputations, and has also suffered severe emotional distress.

DISCUSSION

A. Immunity of the Individual Defendants

Defendants first argue that plaintiff has not plead sufficient facts to overcome the individual defendants' immunity under Pennsylvania's Peer Review Immunity Act ("PRIA"), 63 Pa. C.S.A. §§ 425.1 - 425.4, and the federal Health Care Quality Improvement Act ("HCQIA"), 42 U.S.C. §11101 et seq. Under the Pennsylvania Act, those involved in peer review of physicians are entitled to immunity from liability unless they acted with "malice" or without due care.[2] See generally Cooper v. Delaware Valley

[2] The Act provides in pertinent part:

(a) Notwithstanding any other provision of law, no person providing information to any review organization shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law, unless:

Medical Center, 654 A.2d 547 (Pa. 1995). Under the federal Act, those involved in peer review are generally immune from money damages insofar as the review process and the participant's conduct comply with certain reasonableness requirements. See 42 U.S.C. §§ 11111(1), 11112(a).[3]

As to the Pennsylvania statute, the Pennsylvania Supreme Court has quoted and adopted as its own the following analysis of the Superior Court:

> (1) such information is unrelated to the performance of the duties and functions of such review organization, or
> (2) such information is false and the person providing such information knew, or had reason to believe, that such information was false.
>
> (b)(1) No individual who, as a member or employee of any review organization or who furnishes professional counsel or services to such organization, shall
> be held by reason of the performance by him of any duty, function, or activity authorized or required of review organizations, to have violated any criminal law, or to be civilly liable under any law, provided he has exercised due care.
> (2) The provisions of paragraph (1) of this subsection shall not apply with respect to any action taken by any individual if such individual, in taking such action, was motivated by malice toward any person affected by such action.

63 Pa. C.S. § 425.3

[3] 42 U.S.C. § 11112 provides in part:

(a) In general

For purposes of the protection set forth in section 11111(a) of this title, a professional review action must be taken--
(1) in the reasonable belief that the action was in the furtherance of quality health care,
(2) after a reasonable effort to obtain the facts of the matter,
(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician
under the circumstances, and
(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence.

> The Legislature's clear purpose in enacting the Peer Review Act was to protect peer review participants not just from liability but also from becoming involved in litigation at all. This purpose would be defeated if mere bald allegations or speculations about malicious intent were sufficient to pierce the immunity of The Act. A party seeking to circumvent the bar of The Act must set out his cause with specificity. . . . The averments [in the complaint under review] regarding most of these participants named by appellant are non-specific and fall under a generally conspiracy theory. Such vague allegations are insufficient as a matter of law to pierce the protection of immunity afforded by The Act.

Cooper v. Delaware Valley Medical Center, 630 A.2d 1, 11 (Pa. Super. Ct. 1993); see Cooper v. Delaware Valley Medical Center, 654 A.2d 547, 554 (Pa. 1995).

In this case, it might be inferred from the complaint that some defendants disliked plaintiff and viewed him with "malice" because of his complaints about patient care at the hospital and/or because of his "alleged disruptive behavior."[4] (See Compl. ¶¶ 20-26.) However, the complaint fails to specify how, if at all, each individual defendant was involved in or contributed to the decision-making process that led to plaintiff's suspension. The allegations concerning the suspension decision focus entirely upon and refer exclusively to the MEC and Medical Committee of the Board of Directors. (See Compl. at ¶¶27-28.) The allegations concerning how news of the suspension was subsequently spread in a defamatory and invasive manner refer to PMMC and the

[4] In Cooper, the Pennsylvania Supreme Court held that "malice" as used in the Peer Review Act should be understood to refer to its usual legal meaning as construed by that Court, which is to say "the 'intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent' . . . 'malice' does not necessarily mean a particular ill-will toward another; it comprehends in certain cases recklessness of consequences and a mind regardless of social duty." 654 A.2d at 554, quoting Black's Law Dictionary 862 (5th ed. 1979).

"individual defendants." Except as to defendant Lignelli,[5] there are no allegations that refer to or differentiate among the individual defendants or their respective conduct.

Plaintiff argues that it is sufficient that he identifies the defendants individually and then makes allegations about the "individual defendants" collectively. In support of this proposition, plaintiff cites Doe v. Kohn, Nast & Graf, 1994 WL 517989 (E.D. Pa. Sept. 20, 1994), in which Judge Gawthrop considered allegations referring simply to the "defendants" in deciding that the plaintiff had adequately stated a claim against one particular individual defendant. However, that case involved only two individual defendants, both of whom were leading principals of the defendant firm, and other allegations detailed misconduct particular to that individual defendant. In this case, on the other hand, there are seven individual defendants and, except for Lignelli, the complaint fails to set forth the conduct for which each is individually alleged to be responsible.

Whether under Rule 8 of the Federal Rules of Civil Procedure or under the reasoning of the Pennsylvania courts in the Cooper cases,[6] the individual defendants cannot fairly be maintained as defendants to this lawsuit merely by association with

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[5] Plaintiff makes individualized allegations that Lignelli defamed him and/or cast him in a false light in the course of informing other PMMC staff of plaintiff's suspension. As set forth below, I find these allegations inadequate for other reasons.

[6] It seems to me that the Cooper cases establish more than a mere procedural, heightened-pleading rule for Peer Review Act cases that should not be followed by federal courts under Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). The Cooper courts clearly expressed a view that, as a substantive matter, the Peer Review Act was intended to provide some measure of immunity against litigation itself, not just monetary damages.

PMMC or by general allegations concerning "individual defendants" as a group. The allegations do not set forth facts sufficient to give the individual defendants notice as to the misconduct with which each is charged or to provide this Court with a basis upon which to determine the viability of the claims against each of them. In my view, each defendant is entitled to such individual notice and consideration. Accordingly, I will dismiss the claims against all the individual defendants with leave to amend so that plaintiff may specify on what basis he seeks to hold each of these defendants liable.

B. Defamation per se and "False Light" Claims

Defendants argue that the defamation claims should be dismissed because plaintiff fails to plead the precise content of the alleged defamatory statements ("in haec verba") as required under Pennsylvania law. Defendants cite, inter alia, Ersek v. Township of Springfield, 822 F. Supp. 218, 223 (E.D. Pa. 1993) (granting motion under Rule 12(e) for more definite statement as to defamation claim), which cited Moses v. McWilliams, 549 A.2d 950, 960 (Pa. Super. Ct. 1988), for the proposition that defamation plaintiffs must precisely plead the content of allegedly defamatory statements and when, where, and to whom they were published.[7] However, other courts in this District have declined to

[7] Defendants also cite Thomas v. E.J. Korvette, Inc., 476 F.2d 471, 485 n. 14 (3d Cir. 1973) for the proposition that defamation claims must be plead "in haec verba." That citation is to a footnote in a concurring opinion which, in turn, cites only a Second Circuit case, Foltz v. Moore McCormack Lines, 189 F.2d 537, 539 (2d Cir. 1951), which mentions the rule in passing dicta. The reasoning of the Thomas concurrence does not suggest, as defendants seem to argue, that the rule is a bright-line requirement that alleged defamatory statements be included word for word in a pleading. Rather, like Lynch and other cases cited above, it seems to stand for the proposition that at some point the Court must be given sufficient specifics to determine whether the allegedly defamatory

follow the Pennsylvania courts in this regard, viewing the particularity with which a defamation claim is stated as a procedural issue subject to federal rather than state rules under Erie R.R. v. Tompkins, 304 U.S. 64 (1938). See, e.g., Lynch v. Borough of Ambler, 1995 WL 113290 (E.D. Pa. 1995), citing Karr v. Township of Lower Merion, 582 F. Supp. 410, 413 (E.D. Pa.1983); Borrell v. Weinstein Supply Corp., 1994 WL 530102 (E.D. Pa.1994).

I see no need at present to join this debate, as plaintiff's allegations are insufficient even under the liberal federal standard of Rule 8. As defendants point out, the defamation and "false light" allegations are plead in the most ambiguous of grammatical constructions. (See Compl. ¶¶ 34, 35, 37.) This ambiguity, together with the lack of detail as to the substance of the allegedly defamatory statements, to whom they were made, and, with the exception of the allegations concerning defendant Lignelli, by whom, leaves the Court unable to assess the viability of the allegations and leaves the defendants in the dark as to how each of them is alleged to have defamed plaintiff or cast him in a false light. Accordingly, I will dismiss these claims with leave to amend so that plaintiff may provide a "plain statement" of the facts he believes entitle him to relief as against each defendant.

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statement is capable of having defamatory meaning. See id. How much specificity will be required and at what stage of the case would seem to vary depending on the allegations underlying the defamation claim. In this case, I cannot begin to make such a determination because, as set forth below, the allegations are so grammatically ambiguous.

C. Intentional Interference with Contract

Plaintiff alleges claims against all the defendants for intentional interference with both his existing and prospective contractual relationships with his patients, PMMC, other hospitals, and other physicians. Defendants challenge these claims on grounds that (1) plaintiff does not allege any particular contracts with which they allegedly interfered; (2) PMMC and the individual defendants, acting in their capacities as agents of PMMC, could not tortiously interfere with PMMC's own contract with plaintiff; and (3) plaintiff does not identify any third person(s) with whom defendants interfered and caused to breach or not enter into contracts with plaintiff. In response, plaintiff has withdrawn a number of his claims against certain of the individual defendants, though the Court is somewhat unclear as to exactly what claims plaintiff is and is not withdrawing. Since I am going to require plaintiff to replead his claims against the individual defendants anyway, I will not try to sort out these detail. Defendants may renew their motion once plaintiff has amended his complaint.

I do conclude, however, that plaintiff fails to state a claim against any defendant based on his alleged loss of patients because he does not allege that any defendant actually induced or otherwise interfered with any patient. See Restatement (2d) of Torts § 766 (1979) (imposing liability for "inducing or otherwise causing the third person not to perform the contract"). If plaintiff lost patients or patient revenue as a result of defendants' conduct, that loss might be an element of plaintiff's damages if that conduct

were unlawful under some other theory (i.e., breach of contract); it is not a separate cause of action where there has been no actual interference with the patients.

I also note that, insofar as plaintiff asserts that defendants have interfered with contracts or prospective contracts with other institutions or physicians, he does not identify any specific contract or contractual opportunity with which defendants interfered or allege how any particular individual defendant interfered with any such contractual relations. Plaintiff should address both deficiencies in amending his claims, should he decide to do so.

D. Breach of Contract: the Medical Bylaws

Defendant asserts a breach of contract claim alleging that PMMC violated its medical staff bylaws by summarily suspending him "without just cause" and "without providing him with notice and an opportunity to be heard before final approval by the Medical Committee of the Board of Directors." (Compl. ¶ 52.)

Articles VI ("Corrective Action") and VII ("Hearing Procedure and Appeal") of the Bylaws set forth the two levels of the summary suspension process.[8] In the first instance, Article VI provides:

[8] The Bylaws, attached to defendants' motion to dismiss, are cited at length in plaintiff's complaint and in the parties' briefs and neither party has objected to my consideration of them on this Rule 12(b)(6) motion. I consider them without converting the motion to one for summary judgement. See Pension Benefit Guaranty Corp. v. White Consolidated Ind., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) (holding that on motion to dismiss district court "may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document").

> The Medical Executive Committee, the Chief Executive Officer or Department Chairman shall order a summary suspension of all or part of the Privileges and Prerogatives of a Member whenever there is probably cause to believe that the personal or professional conduct of such Member (i) jeopardizes or, unless immediate action is taken, will jeopardize the safety or best interests of a patient, or (ii) constitutes a wilful disregard of these Bylaws or other Policies of the Hospital.
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> Any such summary suspension shall be immediately effective but shall be subject to review and final action by the Board. . . . Upon the issuance of an order for a summary suspension, the subject Member, the Medical Executive Committee, and the Chief Executive Officer shall be given Notice by the person ordering the action. Any summary suspension issued under this section which may result in the permanent reduction, suspension, or revocation of clinical privileges or, in suspension or expulsion from the Medical Staff will entitle the Member to the procedural rights provided in Article VII of these Bylaws.

Article VI, § 6.5(b).

Article VII, in turn, sets forth the "procedures [] to be followed when any Member of or Applicant to the Medical Staff seeks the opportunity to be heard, the right of appeal and final action on the denial, reduction, suspension or revocation of Staff membership or clinical privileges." Upon summary suspension, and if requested within 30 days of notice thereof, the Member is entitled to a hearing before an ad hoc panel of members of the Medical Staff. §§ 7.1, 7.2. The hearing is scheduled by the Medical Executive Committee, which is to give the Member at least 30 days to prepare. § 7.1(c). After the hearing, in which both the Member and the hearing panel may be represented by counsel, the hearing panel makes a written report and recommendation to the Medical Executive Committee, which in turn makes a recommendation to the Medical Committee of the

Board. §§ 7.3(j), 7.4. If the recommendation is adverse to the Member, he or she may seek appellate review before the Board, including written and oral argument and, under unusual circumstances, supplementation of the record. §§7.4, 7.5. The decision of the Board upon such review is final. § 7.6

Plaintiff has alleged that the MEC, without notice to him, voted on March 18, 1997 to summarily suspend his privileges; that the Medical Committee of the Board ratified the suspension on March 24 after a hearing but again without notice to plaintiff; and that plaintiff was not informed of the suspension until March 25, the same day it became effective. (Compl. ¶¶ 27-32.) Plaintiff does not deny that he was notified of his procedural rights under Article VII when he was informed of the suspension on March 25. Indeed, on April 1 he requested a hearing through counsel, which was reiterated on or about April 4 and April 9, but was told only that a hearing would be forthcoming. No hearing had been scheduled as of the filing of the complaint on April 18. (Compl. ¶¶ 36-40.)

Plaintiff's theory that PMMC breached the Bylaws by suspending his privileges "without providing him with notice and an opportunity to be heard before final approval by the Medical Committee of the Board of Directors" ignores the plain import of the procedural framework created by Articles VI and VII of the Bylaws. Plaintiff had no right under the Bylaws to "notice and an opportunity to be heard" before he was summarily suspended. The Bylaws provide that the summary suspension decision of the

Medical Executive Committee is "effective immediately," requiring no further action, nor any notice or hearing, before becoming effective. Only then is the Member's entitlement to the procedural safeguards of Article VII triggered, should he choose to exercise it.

Plaintiff appears to argue as if the Medical Committee's ratification on March 24 of the MEC's suspension decision was a "final approval" for which he was entitled to prior notice and hearing under Article VII. Clearly, however, that "ratification" was merely an extra step, not required by the Bylaws themselves for summary suspension orders. (Ratification is required to give effect to"adverse recommendations" by the MEC in "routine" -- as opposed to "immediate corrective action" (i.e., summary suspension) -- cases. Compare §6.5(a) with § 6.5(b).) PMMC cannot be held to have breached its Bylaws by affording to plaintiff an extra procedural step the Bylaws did not require.

It is clear from the Bylaws and plaintiff's own allegations that as of the filing of plaintiff's complaint on April 18, there had not yet been a "final approval" of plaintiff's suspension as set forth by Article VII; indeed, the procedural rights due him under Article VII had only just been invoked by plaintiff and his lawyer. As the complaint states, plaintiff had just been told that a hearing would be forthcoming.

In sum, I find that plaintiff states no claim for breach of contract insofar as he complains of the procedures afforded him up to when he was notified of his suspension on March 25, 1997. Insofar as plaintiff asserts in his brief that PMMC failed to provide him with appropriate "post-deprivation" process, no such claim is asserted in the

complaint and I therefore will not consider it.

Plaintiff also claims that PMMC breached the Bylaws because it lacked "probable cause" to suspend him as required under the Bylaws. This claim clearly presents an issue of fact which is put into dispute by the allegations, viewed in plaintiff's favor, and therefore cannot be disposed of on a motion to dismiss. Thus, while I find that plaintiff has not stated a claim based on the process he was afforded, I find that he has stated a claim that summary suspension was not properly invoked against him in the first instance.

E. Breach of Implied Warranty of Good Faith and Fair Dealing

Plaintiff asserts an additional claim that PMMC breached a "covenant of good faith and fair dealing" that is said to be implied in its contractual relationship with plaintiff under Pennsylvania law. See generally Fremont v. E.I. DuPont DeNemours & Co., 988 F. Supp. 870, 874-75, 8776-77 (E.D. Pa. 1997) (discussing the implied duty of good faith and its recent treatment by Pennsylvania courts and the Court of Appeals for the Third Circuit).

I believe this claim lacks merit in the context of this case. The issues raised by plaintiff's allegations with respect to the Bylaws are whether PMMC acted with probable cause and pursuant to proper procedure as required by the Bylaws. The Bylaws detail precisely why and how summary suspension may be invoked, challenged, and affirmed or rejected on review. Even assuming the Bylaws imply a covenant of good faith and fair

dealing, but see Parkway Garage, Inc. v. City of Philadelphia, 5 F.3d 685, 701-702 (3d Cir. 1993), it can add nothing to PMMC's obligations under these Bylaws and therefore can add nothing to plaintiff's claim against PMMC. In suspending plaintiff as it did, PMMC either breached its obligations to him under the Bylaws or it did not. If it did not breach the contract, I do not believe a breach of an implied covenant of good faith would nonetheless be recognized on the same facts by the Pennsylvania Supreme Court. That is to say, if PMMC had probable cause to suspend plaintiff pursuant to the detailed requirements of the Bylaws, a finding of "bad faith" will not make its action unlawful. See Fremont, 988 F. Supp. at 874 n. 1 (E.D. Pa. 1997) (noting the "unremarkable proposition that 'the implied duty of good faith cannot defeat express contractual rights by imposing upon that party specific obligations that it is entitled, by express agreement, to resist.'") (citation omitted). If, on the other hand, PMMC did breach the Bylaws, then plaintiff has an adequate remedy in the breach of contract claim and no additional tort remedy is required or advisable. See Parkway Garage, 5 F.3d at 701-02 (predicting the Pennsylvania Supreme Court would not extend cause of action for breach of implied duty of good faith "to a situation such as the one at bar in which there already exists an adequate remedy at law"). Accordingly, this claim will be dismissed.

F. Remaining State Law Claims

Plaintiffs' remaining claims for civil conspiracy, intentional infliction of emotional

distress, and loss of consortium depend upon or derive from the same allegations underlying plaintiff's other claims, most of which I have dismissed with leave to amend. Accordingly, I will deny defendants' motion to dismiss these claim without prejudice to its renewal if plaintiff amends his claims.

O R D E R

AND NOW this day of June, 1999, upon consideration of defendants' motion to dismiss Counts III - X of plaintiff's complaint for failure to state a claim upon which relief can be granted and the parties' filings related thereto, it is hereby ORDERED that the motion is GRANTED IN PART and DENIED IN PART as set forth below:

(1) all of plaintiff's claims against the individual defendants are DISMISSED with leave to amend;

(2) plaintiff's claim for breach of contract against PMMC (Count III) is DISMISSED insofar as it is based on PMMC's alleged failure to provide him with notice and a hearing prior to his suspension on March 25, 1997;

(3) plaintiff's claim for breach of the "implied covenant of good faith and fair dealing" against PMMC (Count IV) is DISMISSED;

(4) plaintiff's claims for defamation and invasion of privacy (Counts V and VI) are DISMISSED with leave to amend;

(5) plaintiff's claim for intentional interference with existing and prospective contractual relationships (Count VII) is DISMISSED insofar as it is based on plaintiff's relationships with his patients and DISMISSED with leave to amend in all other respects; and

(6) defendants' motion to dismiss is DENIED without prejudice to its renewal in all other respects.

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THOMAS N. O'NEILL, JR. J.